Supreme Court, U.S.
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No. 87-1035

In The

Supreme Court of the United States

October Term, 1987

JAMES P. JOYCE, JR.,

Petitioner,

vs.

LEWIS BOLT & NUT COMPANY,
SELF INSURED,
and
LEWIS BOLT & NUT COMPANY AND
GREAT AMERICAN INSURANCE COMPANY,
and
HMO MINNESOTA AND
NORTH AMERICAN ASSURANCE COMPANY,
and
THE SPECIAL COMPENSATION FUND,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 412 N.W.2d 304 (1987) and is reprinted in Appellant's Appendix. The Workers' Compensation Court of Appeals' decision is reported at 39 W.C.D 148 (1986) and is reprinted in Appellant's Appendix. The Findings and Order of the Compensation Judge, Office of Administrative Hearings, served and filed September 30, 1985, not reported is reprinted in Appellant's Appendix.

JURISDICTION

Judgment of the Minnesota Supreme Court was entered on September 18, 1987. Appellant seeks to invoke this Court's jurisdiction under 28 U.S.C. §1257 (2).

CONSTITUTIONAL PROVISIONS AND RULES

United States Constitution, Amendment XIV, 8)§1 is set forth in Appellant's Appendix.

STATUTES INVOLVED

Minn. Stat. §176.101 (1984); Minn. Stat. §176.101, Subds. 1, 2 (1983); Minn. Stat. §176.101, Subds. 1, 2 (1981-82).

The relevant sections of these Statutes are set forth in Appellant's Appendix.

MOTION

The appellee, Lewis Bolt & Nut, self-insured, in the above-entitled case, moves to dismiss the appeal on the following grounds:

1. The federal question sought to be reviewed was not timely nor properly raised nor expressly passed on by the courts of Minnesota.
2. The appeal does not present a substantial federal question.

STATEMENT OF THE CASE

The appellant, James Joyce, Jr., filed a Claim Petition seeking workers' compensation benefits for six injuries. Five of these injuries occurred prior to 1984. Following each of these five injuries, the employee was able to return to work. On June 15, 1984, Mr. Joyce sustained a sixth injury precluding him from returning to work. This sixth injury occurred after the Minnesota Workers' Compensation Act had undergone changes which became effective January 1, 1984.

A hearing on the Claim Petition took place on July 23 and 24, 1985 before Compensation Judge Bernard Dinner. The Compensation Judge found Mr. Joyce had reached maximum

medical improvement on January 31, 1985, and pursuant to Minn. Stat. §176.101, subd 3e (1984), temporary total disability benefits ended 90 days following maximum medical improvement.

On October 16, 1985, Mr. Joyce appealed the decision of the Compensation Judge to the Minnesota Workers' Compensation Court of Appeals. On November 18, 1986, the decision of the Minnesota Workers' Compensation Court of Appeals was served and filed. This court found that temporary total disability benefits were payable beyond 90 days after reaching maximum medical improvement and ordered that these benefits be paid by Lewis Bolt & Nut and Great American Insurance Company, the employer and insurer at the time of the June 15, 1984, injury.

The Minnesota Supreme Court reviewed on certiorari the decision of the Minnesota Workers' Compensation Court of Appeals, and filed its opinion on September 18, 1987. In reversing the decision of the Minnesota Workers' Compensation Court of Appeals, the Minnesota Supreme Court reinstated the Compensation Judge's decision limiting temporary total disability compensation to the period ending 90 days after the employee reached maximum medical improvement.

Appellant, for the first time, now argues that a federal question arose when the Minnesota Supreme Court rendered a unanimous decision containing an unexpected interpretation of the Minnesota Workers' Compensation Act of 1984.

QUESTIONS PRESENTED

1. Can Appellant raise a federal question on appeal for the first time to the United States Supreme Court when this question was not raised, presented nor pursued in a timely manner before the Courts of the State of Minnesota?
2. Does this appeal present a substantial federal question?

ARGUMENT

I. APPELLANT'S HAVE FAILED TO RAISE A FEDERAL QUESTION IN A TIMELY MANNER.

Appellant's jurisdictional statement raises a federal question that was not raised, presented or pursued in the Courts of Minnesota.

Appellant invokes jurisdiction of this Court by 28 U.S.C. §1257 (2) which provides:

> Final judgements or decrees rendered by the highest court in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> ... (2) By appeal where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision in favor of its validity.

Appellant admits that the question presently being raised is a question that was not raised or decided by the Minnesota Supreme Court. A plain reading of 28 U.S.C. §1257 (2) results in a finding of no jurisdiction since the Minnesota Supreme Court made no decision "in favor of" the validity of the Minnesota Workers' Compensation Act.

The general jurisdiction rule is that the Federal question must be raised, presented and pursued in a timely manner in the state court proceedings. *Beck v. Washington,* 369 U.S. 541, 550-54 (1962). The general rule will not be applied where the grounds for the decision form a new and unexpected basis for a claim based on the denial of a federal right. *Great Northern Railway Co. v. Sunburst Oil & Refinery Co.,* 287 U.S. 358, 366-67 (1932); *Herndon v. Georgia,* 295 U.S. 441 (1935). This exception to the general rule of jurisdiction does not apply to this case, since the Minnesota Supreme Court ruling should have been anticipated by appellant.

The rights of an employee are fixed at the time of his compensable accident. *Schwartz v. Talmo,* 295 Minn. 356, ____, 205 N.W.2d 318, 321 (1973). With respect to Mr. Joyce's June 15,

1984, work accident and resulting claim for temporary total disability, Minn. Stat. §176.101, subd. 3e (1984) provides that such benefits will be terminated 90 days after a finding that the employee has reached maximum medical improvement. Given the plain reading of the statute, one could easily anticipate that 90 days following maximum medical improvement the employee's entitlement to temporary total disability benefits would cease.

The Compensation Judge determined that Mr. Joyce's entitlement to temporary total disability benefits ceased 90 days after reaching maximum medical improvement. The Minnesota Supreme Court reached the same conclusion, which appellant now claims is unconstitutional. Not only could appellant have anticipated the Minnesota Supreme Court's decision, it was, in fact, the same decision reached by the lowest court.

A constitutional challenge to Minn. Stat. §176.101, subd. 3e (1984) was never raised, presented or pursued by appellant at either the Minnesota Workers' Compensation Court of Appeals or the Minnesota Supreme Court despite the Compensation Judge's decision. Based on a plain reading of the Minnesota Workers' Compensation Act and/or the ruling of the Compensation Judge, the appellant should have anticipated that the Minnesota Supreme Court would reinstate the Compensation Judge's decision. Appellant had a duty to raise the federal question at the first opportunity after these constitutional rights allegedly were invaded by the Compensation Judge's decision. *Herndon, supra.*

To raise the federal question on appeal to the United States Supreme Court, at this time, is untimely and this appeal should be dismissed.

II. THIS APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Appellant's basic premise is that the decision of the Minnesota Supreme Court deprived him of rights guaranteed by the Fourteenth Amendment to the United States Constitution. The United States Supreme Court's analysis of alleged violations of

the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is well-established. If a classification impinges upon a fundamental right guaranteed by the United States Constitution or the Bill of Rights, the classification must be necessary to serve a compelling governmental interest. Appellant admits that no fundamental rights are at stake here.

Essentially the same standard of review is mandated for legislation that discriminates against "discrete and insular minorities." *U.S. v. Carolene Products,* 304 U.S. 144, 152 n.4 (1939). This Court has identified only three such categories -race, see *Brown v. Board of Education of Topeka,* 347 U.S. 483 (1954); alienage, see *Graham v. Richardson,* 403 U.S. 605 (1971); and national origin, see *Korematsu v. United States,* 323 U.S. 47 (1944). Appellant makes no claim, nor does any evidence show that he is a member of any of these groups.

An intermediate standard of review is mandated for legislative classification based on gender, see *Craig v. Boren,* 329 U.S. 190 (1976); illegitimacy, see *Mills v. Habluetzel,* 456 U.S. 91 (1982); or discrimination against illegal alien children, see *Phyler v. Doe,* 457 U.S. 202 (1982). Neither the enactments of the Minnesota Legislature 1983, nor the Minnesota Supreme Court's decision in *Joyce v. Lewis Bolt & Nut Co.,* 412 N.W.2d 304 (Minn. 1987) is based, in any way, on categories giving rise to scrutiny under an immediate standard of equal protection analysis.

Legislation within the areas of economics and social welfare which results in some inequality does not violate the Federal Equal Protection Clause. *Dandridge v. Williams,* 397 U.S. 471, 485 (1971). "[W]hen social or economic legislation is at issue, the Equal Protection Clause allows states wide latitude, . . . and the Constitution presumes that even improvident decisions will be rectified by the democratic process." *City of Cleburn, Texas v. Cleburn Living Center, Inc.,* 473 U.S. 432, 105 S.Ct. 3249,3254 (1985).

Review of classifications under the Equal Protection Clause of the Fourteenth Amendment by the United States Supreme

is limited. A classification is presumed to be constitutionally valid, "and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest". Id. 473 U.S. at , 105 S.Ct. at 3255. Essentially, equal protection analysis by the United States Supreme Court uses a two-part test: (1) Does the classification have a legitimate purpose? (2) Could legislators reasonably have believed the classification would promote this purpose? *Western & Southern Life Insurance Co. v. State Board of Equalization,* 451 U.S. 648, 668 (1981).

It is clear, as appellant acknowledges, that the legislation enacted by the Minnesota Legislature meets this Equal Protection Challenge. Appellant's argument is that the Minnesota Supreme Court's decision unconstitutionally extends the provisions of the 1984 legislation to encompass injuries sustained before January 1, 1984. The Minnesota Supreme Court held that appellant's right to temporary total disability benefits did not vest prior to June 15, 1984, because he was not totally disabled until June 15, 1984. The fact that the prior injuries contributed to the quantum of disability he suffered after June 1984 was not proved until after that injury. *Joyce,* 412 N.W.2d at 308. As the Minnesota Supreme Court points out, "most often the occurrence of a compensable injury is the [event which controls the employee's right to benefits.]" Id. at 307.

Appellant was able to work until June 15, 1984, when he sustained his sixth work-related injury. The law in effect on the date of the last injury controls appellant's entitlement to, and the amount of, benefits under Minnesota Workers' Compensation Law. Some employees will benefit from this rule of law, and some, like appellant, will not. The key question, however, is whether the Minnesota Supreme Court's classification has a legitimate purpose. The Minnesota Supreme Court used this case to clarify and make certain that the law in effect on the date of an employee's final compensable injury controls the employee's entitlement to workers' compensation benefits. Bringing certainty to an unsettled area of the law is a legitimate and proper role of a state supreme court. This decision

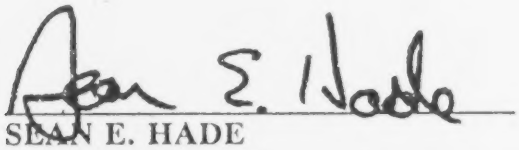
promoted that objective.

Thus, appellant's entitlement to benefits is controlled by the "new" workers' compensation law. This does not deny appellant equal protection under the laws. The Minnesota Supreme Court followed past precedents to reach the conclusion that the law in effect at the time of the employee's last compensable injury governs the employee's entitlement to, and the amount of, workers' compensation benefits. The challenged classification was not created by the Minnesota Supreme Court's decision in *Joyce,* but *Joyce* reaffirmed previous decisions of the Minnesota Supreme Court. See *Schwartz v. Talmo,* 295 Minn. 356, 205 N.W.2d 318 (1973). The challenged decision of the Minnesota Supreme Court furthers the purpose of clarifying a basic tenet of workers' compensation law — the law in effect at the time of the last compensable personal injury controls the employee's entitlement to, and amount of, worker's compensation benefits.

CONCLUSION

For these reasons, this Court should dismiss the appeal, and affirm the decision of the Minnesota Supreme Court.

Respectfully submitted,



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